



UTILITY PATENT

B&D No. TN-1444A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Roger Q. SMITH**

Serial No.: **09/262,751**

Examiner: **R. Persino**

Filed: **March 4, 1999**

Group Art Unit: **2681**

For: **HEAVY DUTY AUDIO EQUIPMENT**

Assistant Commissioner for Patents
Washington, DC 20231

REQUEST FOR RECONSIDERATION

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I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington DC 20231 on 9-13-2001

Adan Ayala

Dear Sir:

This is in response to the final Office Action mailed July 30, 2001.

Currently in the application are Claims 1-45.

The Examiner rejected Claims 17-19, 43 and 45 under 35 USC § 103(a) as being unpatentable over US 4,870,702 ("Azzouni") in view of US Patent No. 5,633,096 ("Hattori").

This rejection is respectfully traversed.

Applicant will address the rejection as to Claims 17 and 43 separately, for the sake of clarity.

As admitted by the Examiner, Azzouni does not disclose a method where a battery pack is disposed in and removed from the charger. The Examiner relies instead on Hattori to provide the

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missing elements. However, Hattori does not disclose disposing a battery pack in and removing it from the charger. Instead, it discloses installing a battery pack in a holder housing, not in a charger.

The Examiner argues that Hattori teaches “a battery pack being disposed in and removed from a housing and that it is charged within the housing.” However, such teaching is still not the “disposing a battery pack in a charger and removing it from the charger” elements of Claim 17. Why? Because the housing is not a charger and is separate from any charger. Indeed, if a user needs to charge the battery pack, the user would need to install “a known connection plug,” such as plug 30, to charge and discharge. See Hattori, col. 6, lns. 7-11. Accordingly, the housing is separate from the charger.

To find otherwise would run against the understanding of people of ordinary skill in the art. Applicant submits the following scenario: a car battery is disposed in a car. Through usage, the battery becomes discharged. The driver then connects a separate charger to the battery without removing the battery. Under the Examiner’s logic, the battery is disposed in a housing, i.e., the car, and charged within the housing. But is the battery disposed in the charger? No, because the battery has not been moved from the car or disposed in the charger. Instead, the battery has been connected to a charger with a separate cable.

Similarly, the battery pack of Hattori has not been moved from the housing and disposed in a charger. Instead, it is connected to a charger via a separate plug, rather than directly disposed within the charger. Therefore, Hattori does not supplement Azzouni in such a manner to provide all the claimed elements and render Claim 17 unpatentable.

The Examiner further proposes an alternate argument, where he alleges that the Azzouni-Hattori combination teaches “disposing a battery pack in and removing it from the charger.” The Examiner bases his argument on the assumption that, if the rechargeable battery of Azzouni is not replaceable, the Azzouni device “will be rendered useless.” Such assumption is incorrect because the user can still use the Azzouni device by connecting it to the AC power via connector 33. In other words, the Azzouni device will not be rendered useless by a defective battery. Therefore, Azzouni does not teach or suggest that the battery must be replaceable. Accordingly, the Azzouni-Hattori combination does not have all the claimed elements. Therefore, it cannot render Claims 17-19 unpatentable.

The Examiner also rejected Claims 43 and 45. As admitted by the Examiner, Azzouni does not disclose a receptacle in the charger, or a battery pack detachably connectable in a power tool mounted in the receptacle.

The Examiner relies instead on Hattori to provide the missing elements. However, Hattori discloses neither a charger having a receptacle, nor a battery pack mounted in the receptacle, connecting the battery pack to the charger. Instead, it discloses mounting a battery pack in a holder, not in a charger.

The Examiner argues that Hattori teaches “a battery pack being disposed in and removed from a receptacle in a housing and that it is charged within the housing thus inherently having a charger.” However, such teaching is still not “a charger disposed in the housing, a receptacle in the charger, [and] a battery pack ... mounted in the receptacle,” i.e., the claimed elements, that Claim 43 requires. Why? Because the housing is not a charger and is separate from any charger.

Indeed, if a user needs to charge the battery pack, the user would need to install “a known connection plug,” such as plug 30, to charge and discharge. See Hattori, col. 6, lns. 7-11.

Accordingly, the housing is separate from the charger.

To find otherwise would run against the understanding of people of ordinary skill in the art. Again, if we apply the car battery/charger scenario, the battery is disposed in a housing, i.e., the car, and because this battery is charged with the car/housing, the car/housing inherently has a charger, under the Examiner’s logic. But does the car/housing inherently have the separate charger? No.

Similarly, the battery pack of Hattori is not disposed in a charger. Instead, it is disposed in a housing, which is separate from the charger, rather than directly disposed within the charger. Therefore, Hattori does not supplement Azzouni in such a manner to provide all the claimed elements and render Claim 43 unpatentable.

The Examiner further proposes an alternate argument, where he alleges that the Azzouni-Hattori combination teaches the missing elements. The Examiner bases his argument on the assumption that, if the rechargeable battery of Azzouni is not replaceable, the Azzouni device “will be rendered useless.” As explained above, such assumption is incorrect because the user can still use the Azzouni device by connecting it to the AC power via connector 33. In other words, the Azzouni device will not be rendered useless by a defective battery. Therefore, Azzouni does not teach or suggest that the battery must be replaceable. Accordingly, the Azzouni-Hattori combination does not have all the claimed elements. Therefore, it cannot render Claims 43 and its dependent claims unpatentable.

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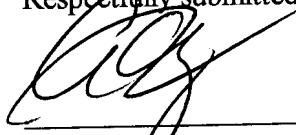
The Examiner also rejected Claims 20 and 44 under 35 USC § 103(a) as being unpatentable over Azzouni in view of Hattori and further in view of US Patent No. 4,709,201 ("Schaefer"). This rejection is respectfully traversed.

Claims 20 and 44 are ultimately dependent upon Claims 17 and 43, respectively. As such, they include all the elements of their respective independent claims. As mentioned above, the Azzouni-Hattori combination does not disclose "disposing the battery pack in the battery charger ... and removing the battery pack from the charger" and "a charger disposed in the housing, a receptacle in the charger, [and] a battery pack ... mounted in the receptacle" as called for in Claims 17 and 43, respectively. Schaefer does not disclose such elements. Therefore, the Azzouni-Hattori-Schaefer combination does not include all the claimed elements and thus cannot render Claims 20 and 44 unpatentable.

In view of the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 1-45 are respectfully requested.

No fee is due for the present amendment. Nevertheless, the Commissioner is authorized to charge payment of any fees due in processing this response, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



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